UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CARLOS OCAMPO, et al., Plaintiffs, v. 455 HOSPITALITY LLC, et al., Defendants.

Case No. 14-CV-9614 (KMK)

OPINION & ORDER

REDACTED

Appearances: John J. Malley, Esq. Smith, Buss & Jacobs, LLP Yonkers, NY Counsel for Plaintiffs Vincent Volino, Esq. Vincent Volino PLLC Yonkers, NY Counsel for Plaintiffs Jonathan D. Levitan, Esq. Rosenbaum & Associates PC South Salem, NY Counsel for Defendants Doubletree Franchise LLC and Doubletree Hotel Systems, Inc. KENNETH M. KARAS, District Judge:

Carlos Ocampo, Igor Morozov, Jorge Villanueva, Amaury Ortiz, Plinio Retana, Manuel Calderon, Sutee Monchaitanapat, Douglas Molina, Nelson Delarosa, Felipe Barriga, Sonia Gonzalez, Alberto Gonzales, Panfilo Escobar, Edward Suriel, Alejandro Gonzalez, Francisco Solis, Candido Sanchez, Estela Penalo Diaz, Lucia Rojas-Escolastico, Jennys Moya, Clarisa Rojas-DeLaRosa, Hil themselves and all others similarly situated, bring this Action alleging violations of the Fair

et seq. §§ 190 et seq. and 650 et seq. 1

Doubletree Franchise LLC and Doubletree Hotel Systems, Inc. Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) (the following reasons, the Motion is denied.

I. Background A. Factual Background

as true for the purpose of resolving the instant Motion.

455 Hospita , and manager of the Double Tree by Hilton Hotel, located at 455 Broadway, Tarrytown, New York 10591 (the of D id. ¶ 61), which have granted licenses to various franchisees to operate

id. ¶ 64). Plaintiffs consist of banquet servers, housemen, a houseman supervisor, banquet supervisors, restaurant waiters, a room service water, housekeepers, and a kitchen sous chef who

have been employed to work at the Hotel. (Id. ¶ 1.) They allege, inter alia, claims for unpaid minimum wages, overtime pay, gratuities, tips, failure to maintain records, and wage statement violations. (Id. ¶ 6.)

1 Since the filing of the Second Amended Complaint, numerous individuals have consented to join the Action. (See Dkt. Nos. 92 108, 120 21, 123 26, 128 46, 148 76, 179 80, 196 97, 204 also includes these members of the class.

B. Procedural Background Plaintiffs commenced the instant Action on December 4, 2014, alleging Franchisor Defendants,

rights under the FLSA and NYLL. (Dkt. No. 1.) 455 Hospitality, Abdou, Friedman, Haque, and On February 23, 2015, Plaintiffs filed their First Amended Complaint. (Dkt. No. 19.) 455 Hospitality, Abdou, Friedman, Haque, and Ribbens filed an Answer to Complaint on March 13, 2015. (Dkt. No. 38.) Pursuant to a Scheduling Order adopted by the

Court on May 13, 2015, (Dkt. No. 49), Plaintiffs filed their Second Amended Complaint on June 16, 2015, (Dkt. No. 60), and 455 Hospitality, Abdou, Friedman, Haque, Ribbens, and Doreem Clarke filed an Answer on August 5, 2015, (Dkt. No. 76). 2

Plaintiffs filed their Motion for Conditional Collective Certification on August 5, 2015. (Dkt. Nos. 77 79.) Defendants submitted their opposition on September 2, 2015, (Dkt. Nos. 83 84), and Plaintiffs submitted their reply on September 18, 2015, (Dkt. No. 89). The Court held

oral argument on February 26, 2016, (Dkt. (minute entry for Feb. 26, 2016)), granting in part and Motion for Conditional Collective Certification, (Dkt. No. 91). 3

Pursuant to the Scheduling Order, (Dkt. No. 49), Franchisor Defendants filed their Motion To Dismiss and supporting papers on August 4, 2015. (Dkt. No. 75.) Plaintiffs filed

2 The Second Amended Complaint added Doreen Clarke as a named Defendant. (See Dkt. No. 60.)

3 By Order dated March 2, 2016, the Court, among other things, conditionally certified a FLSA class as to non- Departments. (Dkt. No. 91.)

their opposition on September 2, 2015, (Dkt. No. 85), and Franchisor Defendants filed their reply on September 18, 2015, (Dkt. No. 88). 4

II. Discussion A. Standard of Review

[or her] entitlement to relief requires more than labels and conclusions, and a formulaic recitation

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (alteration and internal quotation marks omitted). Indeed, Rule 8 of the Federal Rules of than an unadorned, the-defendant-unlawfully-harmed-me Ashcroft v. Iqbal Id. (alteration and internal quotation Twombly

has been stated adequately, it may be supported by showing any set of facts consistent with the id. id. claims across the line fro id.; see

also Iqbal will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer

4 Pursuant to an Order dated June 21, 2016, (Dkt. No. 147), Franchisor Defendants submitted appropriately redacted versions of their motion papers for public filing, (Dkt. Nos. 183, 198 203).

more than the mere possibility of misconduct, the complaint has alleged but it has not alteration in original) (citation omitted) (quoting Fed. R. Civ. P. 8(a)(2))); id. at 678 departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per

curiam); see also Aegis Ins. Servs., Inc. v. 7 World Trade Co., 737 F.3d 166, 176 (2d Cir. 2013) n marks omitted)).

. . . draw[s] all Daniel v. T&M Prot. Res., Inc., 992 F. Supp. 2d 302, 304 n.1 (S.D.N.Y. 2014) (citing Koch v , 699 F.3d 141, 145 (2d Cir. 2012)). written instrument attached to the complaint as an exhibit[,] or any statements or documents

incorporate

at N.Y. Inst. of Tech., Inc., 742 F.3d 42, 44 n.1 (2d Cir.) (alterations and internal quotation marks omitted), cert denied, 135 S. Ct. 677 (2014); see also Leonard F. v. Isr. Disc. Bank of N.Y., 199 F.3d 99, 107 (2d Cir. b)(6) motion, a district court must confine its consideration to facts stated on the face of the complaint, in documents appended to the complaint or incorporated

al quotation marks omitted)); Wang v. Palmisano, 157 F. Supp. 3d 306, 317 (S.D.N.Y. 2016) (same).

B. Analysis

1. Materials Properly Considered on the Motion In support of the Motion, Franchisor Defendants have submitted the Franchise Agreement and three subsequent amendments. (Decl. of Julie Garrison in Supp. of Mot. Garrison E (Dkt. No. 199).) They concede that Plaintiffs neither attached the contract to their pleadings nor specifically incorporated it therein by reference. (See Moving 200).) Nevertheless, Franchisor nd Amended Id.

Defendants] rely upon . . . only applies if the solely relies on the submitted

As noted above, on a Rule 12(b)(6) motion, a court generally must consider only the complaint, which is deemed to include any written instrument attached to it as an exhibit or any Chambers v. Time Warner, Inc., 282 F.3d 147, 152 (2d Cir. 2002) (internal quotation marks omitted). 5

A court may also consider a

5 While Defendants do not argue that the Franchisor Agreement falls in either category, (see was not attached to the pleadings and, although it is referenced in the Second Amended are insufficient Korova Milk Bar of White Plains, Inc. v. PRE Props., LLC, No. 11-CV-3327, 2013 WL 417406,

where the complaint relies heavily upon its terms and effect, [which] render[s] the DiFolco v. MSNBC Cable L.L.C., 622 F.3d 104, 111 (2d Cir. 2010) (internal quotation marks omitted). The Second Circuit has cautioned, however, that reliance on the terms and effect of a document in drafting the complaint is a deration of the document on a dismissal motion; mere Chambers, 282 F.3d at 153. Additionally, integral to the complaint, it must be clear on the record that no dispute exists

regarding the authenticity DiFolco, 622 F.3d at 111 (some internal quotation marks omitted); see also Fine v. ESPN, Inc., 11 F. Supp. 3d 209, 221 (N.D.N.Y. 2014) ven implicit, conclusory, contradictory, or implausible objections to the authenticity ). 6

at *6 n.3 (S.D.N.Y. Feb. 4, 2013); see also Sira v. Morton, 380 F.3d 57, 67 (2d Cir. 2004) eference to documents that may constitute relevant evidence in a . Nor is the matter[] of which judicial notice may be taken Leonard F., 199 F.3d at 107 (internal quotation marks omitted); see also Medcalf v. Thompson Hine LLP, 84 F. Supp. t from the fact that Franchisor Defendants filed the entire document and its amendments under seal, (Dkt. Nos. 75, 88). Thus, for purposes of the Motion, the Court may only consider the submitted exhibits if the documents are ded Complaint. See Chambers, 282 F.3d at 153 (internal quotation marks omitted).

6 When Franchisor Defendants first submitted their motion papers under seal, the Franchise Agreement was filed as an exhibit to a declaration by their counsel, Jonathan D. Levitan, Esq. (See No. it was submitted by counsel for . . . Franchisor Defendants, who does not have the personal

85).) In publicly filing their motion papers, Franchisor Defendants submitted the Franchise Agreement and amendments as exhibits to the Declaration of Julie Garrison, (Garrison Decl. Exs. B E), who at all relevant times served as Senior Director for Brand Performance of North America for Hilton Worldwide, Inc., (see Garrison Decl. ¶ 2). She attested to her familiarity with the relevant agreements and affirmed their authenticity. (See id. ¶ 4.) Regardless, the Court

terpretation extraneous document for it to be considered, (see 2, 21 22) unavailing. The see Allen v.

Chanel Inc., No. 12-CV-6758, 2013 WL

Williams v. Time Warner, Inc., 440 F Cir. 2011))), but it is not so narrow as Plaintiffs suggest in pointing to Roth v. Jennings, 489 F.3d

499 (2d Cir. 2007), where the Second Circuit explained that a document upon which the complaint solely relies and which is integral to the complaint may be considered by the court in ruling on [a Rule 12(b)(6)] motion. Id. at 509. This solely does not subsume the well- where the complaint relies

notes that it would have considered the documents as submitted by counsel for Franchisor Defendants. Although Fine, 11 F. Supp. 3d at 221, Plaintiffs did not dispute the authenticity or accuracy of the submitted exhibits see also id. at 18 However, such an assertion regarding personal preclude consideration of the Franchise Agreement for purposes of resolving the instant Motion. See F.D.I.C. v. U.S. Mortg. Corp. that counsel lacks personal knowledge of the documents, without specifically challenging their veracity, is insufficient to call their authenticity into question and prevent the [c]ourt from accord Breyan v. U.S. Cotton, LLC Long Term Disability Plan, No. 12-CV-491, 2013 WL 5536795, at *5 (W.D.N.C. Oct. . Moreover, the original declaration from defense counsel states, under penalty of

Court credits this affirmation. See Wilson v. Kellogg Co., 111 F. Supp. 3d 306, 312 (E.D.N.Y. 2015) (crediting objection), 2016).

heavily upon its terms and effect. DiFolco, 622 F.3d at 111 (emphasis added) (internal quotation marks omitted); see also Lohan v. Perez, 924 F. Supp. 2d 447, 453 (E.D.N.Y. 2013)

which the complaint solely relies and is integral to the complaint, or where the complaint relies heavily upon its terms and effect, thereby rendering t (emphasis added) (alteration, citation, and internal quotation mark omitted)). Indeed, the Court

has found no controlling authority suggesting that a relied-upon document cannot be considered merely because a complaint also rests on additional facts. Cf. Fine, 11 F. Supp. 3d at 221

In this Action, there is clear evidence from the face of the Second Amended Complaint that Plaintiffs heavily relied on the Franchise Agreement in drafting their pleadings. Plaintiffs expressly refer to the document eight times in the paragraphs setting forth allegations against Franchisor Defendants, (see SAC ¶¶ 167 through the Franchise Agreement id. at 29 (emphasis added)). The Second Amended

to the [F]ranchise [A]greement, (see, e.g., id. ranchise [A]greement[,] . . . Franchisor Defendants mandated that 455 Hospitality require its employees -employer-claims a

see also id. at 8 15 (alleging that Franchisor Defendants exerted functional control over Plaintiffs

(citing, inter alia, SAC ¶¶ 167 69, 171 74) claims against Franchisor Defendants turns on that relationship, given that, as discussed below,

the relevant sections of the FLSA and NYLL apply only to employers as defined by those statutes. Olvera v. Bareburger Grp. LLC, 73 F. Supp. 3d 201, 204 (S.D.N.Y. 2014).

heavy reliance on the Franchise Agreement is further evidenced by the Second

the document. For example, in alleging that Franchisor Defendants exerted control over employees at the Hotel, Plaintiffs devote 10 paragraphs to discussion of a quality assurance Compare SAC ¶¶ 175 84, with Garrison Decl. .) Their repeated use of the term Compare SAC ¶¶ 166, 171 72, 174, with for purposes of the Franchise Agreement).) Clearly, and quite literally, Plaintiffs relied on the

See Annese v. Sodexo, Inc., No. 12- CV-412, 2012 WL 2571261, at *3 (N.D.N.Y. July 2, 2012) (finding a document integral where it referenced several times in the [a]mended [c]omplaint and [the plaintiff] clearly relie[d] cf. Cortec Indus., Inc. v. Sum Holding L.P., 949 F.2d 42, 47 (2d Cir. 1991) (explaining that a plaintiff may not avoid consideration of a document integral to his or her complaint by failing to attach or incorporate it by reference).

Accordingly, the Court finds the Franchise Agreement integral to the Second Amended Complaint and thus will consider the submitted exhibits in resolving the instant Motion.

2. Merits of the Motion Plaintiffs allege various violations of their rights under the FLSA and NYLL. (See generally SAC.) Franchisor Defendants, in turn, move to dismiss the Second Amended Complaint as to them. (Mot. (Dkt. No. 183).) Because the relevant sections of the FLSA and

NYLL apply only to employers, as defined by those statutes, see Olvera, 73 F. Supp. 3d at 204,

for their claims to survive at this stage in the litigation. The Motion thus turns on that single question.

a. , in pertinent part, 7

The Supreme Court has emphasized that this is a Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 326 (1992); see also Olvera, 73 F. Supp. 3d at 204 (same). An individual may simultaneously have multiple employers for the purposes of the FLSA, in which case all joint employers are responsible, both individually and jointly, for compliance with all of the applicable provisions of the [statute]. Olvera, 73 F. Supp. 3d at 204 (quoting 29 C.F.R. § 791.2(a)).

-employee relationship exists for purposes of the FLSA should Barfield v. N.Y.C. Health & Hosps. Corp., 537 F.3d 132, 141 (2d Cir. 2008) (quoting Goldberg v. Whitaker House Coop., Inc., 366 U.S. 28,

33 (1961)). In determining whether defendants are the Olvera, 73 F. Supp.

7 The FLSA and NYLL employ nearly identical standards with respect to determining employment status. Compare with N.Y. or association employing any individual in any occupation, industry, trade, business Courts regularly apply the same tests to determine whether entities are joint employers for purposes of the FLSA and NYLL. See, e.g., Olvera, 73 F. Supp. 3d at 206; Cano v. DPNY, Inc., 287 F.R.D. 251, 260 n.2 (S.D.N.Y. 2012).

3d at 205 (quoting Rutherford Food Corp. v. McComb, 331 U.S. 722, 730 (1947)), viewed in light Goldberg, 366 U.S. at 33; see also Benitez v. Demco of Riverdale, LLC, No. 14-CV-7074, 2015 WL 803069, at *1 (S.D.N.Y. Feb. 19, 2015) (explaining that the power to control Olvera, 73 F. Supp. 3d at 205 (some internal quotation marks omitted).

In assessing economic reality, the Second Circuit has articulated two tests to determine whether an employment relationship existed for the purposes of the FLSA. The first, the formal alleged employer (1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) Graziadio v. Culinary Inst. of Am., 817 F.3d 415, 422 (2d Cir. 2016) (internal quotation marks

omitted); see also Olvera continuous monitoring of employees, looking over their shoulders at all times, or any sort of

, 967 F. Supp. 2d 901,

exercised only occasionally, without removing the employment relationship from the protections Id. is dispositive . . . Graziadio, 817 F.3d at 422 (internal quotation marks omitted).

Additionally, the Second Circuit has identified a number of factors pertinent to

See Zheng v. Liberty Apparel Co. Inc., 355 F.3d 61, 72 (2d Cir.

2003). Under this functional control test, courts look to the following relevant, though not exc the alleg premises and equipment were used for the pla subcontractors had a business that could or did shift as a unit from one putative joint employer to another; (3) the extent to which [the] plaintiffs performed a discrete line job that was integral to responsibility under the contracts could pass from one subcontractor to another without material

changes; (5) the degree to which work; and (6) whether [the] plaintiffs worked exclusively or predominantly for the alleged employers Olvera, 73 F. Supp. 3d at 205 06 (alterations and internal quotation marks omitted) (quoting Zheng, 355 F.3d at 72).

Barfield, 537 F.3d at 143. Rather, these exclusive and overlapping set of factors to ensure that the economic realities test mandated by the Supreme Court is sufficiently comprehensive and flexible to give proper Id. (internal quotation marks omitted).

b. Application The Second Amended Complaint has pled facts to at least satisfy the functional control test. 8

Plaintiffs allege, inter alia, that Franchisor Defendants: (1) imposed mandatory training

8 therefore is not applicable to the instant Action. is contradicted by decisions that analyze the status of a franchisor defendant under the functional control test. See, e.g., Cordova v. SCCF, Inc., No. 13-CV-5665, 2014 WL 3512838, at *4 5 (S.D.N.Y. July 16, 2014) control test outlined in Zheng ); Olvera, 73 F. Supp. 3d at 206 07 (concluding that the complaint pled facts that would satisfy both the formal control and the functional tests).

In their opposition papers, Plaintiffs argue that they have alleged sufficient facts to See 15.) They do not, however, make any effort to satisfy the formal control test, (see generally id.), despite Franchisor

programs for employees at the Hotel, (SAC ¶¶ 167, 169), which was a pre-condition for the id. ¶ 168), and a requirement for ongoing operations, (id. ¶ 170); (2) id. ¶ 171(a)); (3) imposed mandatory recordkeeping requirements on 455 Hospitality, (id. id. ¶ 172); (5) required that 455 Hospitality use

see id. ¶ 173); (id. unannounced audits and inspections of

e with [their] financial recordkeeping id. ¶ 175; see also id. ¶ 179 (alleging that Defendants performed regular inspections of work performed by employees in the Housekeeping of by Hotel employees, (see, e.g., id. ¶ Hotel wo poor performance, (see id.

from . . . Franchisor Defendants, Hotel employees are disciplined and/or reprimanded by 455

id. ¶ 183); and (9) were aware that Plaintiffs were not paid gratuities owed to

employment relationship under those factors, (see factors are applied to the [Second Amended Complaint], . . . Plaintiffs clearly failed to allege

Court will not analyze whether Franchisor Defendants exercised formal control over Plaintiffs.

them, (see id. 185 92 id. ¶ 193). 9

see, e.g., Mem. 8 (arguing Franchisor] Defendants had

that these allegations, taken together, state a plausible claim that

Defendants repeatedly assert that were employed by 455 Hospitality, which was merely an independent contractor of Doubletree

[HIS] Id. at 16; see also id. at 7 (asserting that the franchisor-franchisee id. at 11 (asserting that,

t .) However, though the Franchise

greement ¶ 15),

Real v. Driscoll Strawberry Assocs., Inc., 603 F.2d 748, 755 (9th Cir. 1979) (citing, inter alia, Rutherford, 331 U.S. at 729); see also Browning v. Ceva Freight, LLC,

9 Of these allegations, the first six point to the Franchise Agreement as the foundation of the control exerted by Franchisor Defendants over Hotel employees. The substance of these allegations that Franchisor Defendants maintained the right to inspect the Hotel, imposed recordkeeping requirements on 455 Hospitality, etc. are consistent with provisions contained in the document. (See, e.g., Franchise Agreement ¶ 3(a) (training); id. ¶ 3(e) (inspections); id. ¶ 6(a) (operational requirements); id. ¶¶ 8(a) (b) (recordkeeping requirements).) Indeed, Franchisor Defendants do not dispute the existence of these conditions but rather challenge See Moving D -

885 F. Supp. 2d 590, 599 (E.D.N.Y. 2012) (same); Harris v. Attorney Gen. of the U.S., 657 F.

support an inference that Franchisor Defendants exerted control over Hotel employees. Indeed, many of the ther courts to be suggestive of joint employer status. See, e.g., Cordova v. SCCF, Inc., No. 13-CV-5665, 2014 WL 3512838, at

materials for use in training . . . and monitoring

which meant

Cano v. DPNY, Inc., 287 F.R.D. 251, 260 (S.D.N.Y. 2012) (finding allegation that the ] stores to ensure supported joint employer status); accord Orozco v. Plackis, No. 11-CV-703, 2012 WL 2577522, at *2 3, 6 (W.D. Tex. July 3, 2012) (report and recommendation) (denying motion to dismiss where the complaint alleged, inter alia, that the

work). 10

For example, like the pleadings in Olvera, see 73 F. Supp. 3d at 207 (finding that the

the Second Amended Complaint points to training and recordkeeping requirements as indicators

see SAC ¶¶ 167 70, 171(b) (c)). Plaintiffs also similarly plead facts regarding the monitoring of Hotel employees, (compare, e.g., id. ¶ 179 (alleging that with Olvera, 73 F. Supp. 3d at 207 (considering allegation that the franchisor Hotel, (compare

with Olvera, 73 F. Supp. 3d at 207 (denying motion to dismiss where the complaint alleged, inter alia, that the franchisor defendants had the right to inspect the facilities . As

Olvera, 73 F. Supp. 3d at 207, the Second Amended Complaint alleges

10 ranchisor can qualify as a joint Cordova only four decisions within the Second Circuit have ruled on the issue under the Rule 12(b)(6) standard, all of which found that the plaintiffs pled sufficient facts to survive a motion to dismiss. See Benitez employer . . . cannot be resolved on a pre-answer motion to dism ; Cordova, 2014 WL plausibly pleaded facts ; Olvera Although [the] plaintiffs may ultimately fail to prove that the franchisor defendants were joint employers under the FLSA and NYLL, they have pled enough facts to survive a motion to dismiss, and are thus entitled to test ; Cano, 287 F.R.D. at 260 (granting leave to file a second amended complaint because

requirements for the purchase of certain furniture and equipment, (see SAC ¶ 171(d)), participation in certain marketing and guest programs, (see id. ¶ 171(e)), compliance with established conditions for operation, (see id. ¶ 172), and the use of a particular business software system, (see id. ¶ 173).

Moreover, Plaint the event of non-compliance with QA requirements, (see id. ¶ 183; cf. Franchise Agreement ¶ t [the] [H]otel, (see SAC ¶ 183). 11

By way of illustration, the Second Amended Complaint highlights one Id. ¶ 184.) 12

While other courts have noted

Singh v. 7-Eleven, Inc., No. 05-CV-4534, 2007 WL 715488, at *4 (N.D. Cal. Mar. 8, 2007), Plaintiffs by no means rely on this allegation alone, as discussed above.

11 In their r clause, no sanctions for non- directly contradicts the terms of the Franchise Agreement,

(Franchise Agreement ¶ 14(a).) Because this footnote quotes from a redacted portion of the Franchise Agreement, the Opinion will be redacted for public filing as well as filed under seal.

12 Defendants suggest a heightened standard that is inappropriate at this early stage, see Twombly, enough facts ); Francis v. Donahoe, No. 13- CV- state a claim pursuant to Rule 12(b)(6) is designed merely to assess the legal feasibility of a complaint, not to assay the weight of evidence which might

be offered in support thereof. (internal quotation marks omitted)).

Barfield, 537 F.3d at 142, the Court finds that Plaintiffs have pled sufficient facts to plausibly suggest functional control, see Olvera, 73 F. plead facts

13

Though Plaintiffs may ultimately fail to prove that Franchisor Defendants were joint employers under the FLSA and NYLL, the Second Amended Complaint has set forth enough allegations to survive a motion to dismiss, and Plaintiffs are thus entitled to test their claims in discovery.

13 The decisions on which Franchisor Defendants rely are not to the contrary, first and foremost because none of those cases addresses the question of whether a franchisor qualifies as a joint employer. See Lopez v. Acme Am. Envtl. Co., No. 12-CV-511, 2012 WL 6062501, at *4 5 exercised control over the plaintiffs for purposes of the FLSA or NYLL); Wolman v. Catholic

Health Sys. of Long Is., Inc., 853 F. Supp. 2d 290, 297 99 (E.D.N.Y. 2012) (analyzing FLSA claims against entities in an ), v. Catholic Health Sys. of Long Is. Inc., 711 F.3d 106 (2d Cir. 2013); Diaz v. Consortium for Worker Educ., Inc., No. 10-CV-1848, 2010 WL 3910280, at *3 (S.D.N.Y. Sept. 28, 2010) (assessing employment relationship where two entita programs administration). Additionally, the facts alleged in the Second Amended Complaint more strongly support joint employer status by suggesting a higher degree of control exercised by Franchisor Defendants over Plaintiffs duties. See Lopez, 2012 WL 6062501, plaintiffs); Wolman assertions that

. . . alteration in original) (citations omitted)); Diaz, 2010 WL 3910280, at *4 (granting motion to dismiss where the complaint the plaintiffs, hiring or firing the plaintiffs, determining their working hours, or maintaining .

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York

20 III. Conclusion For the foregoing reasons, Franchisor Defendants' Motion To Dismiss is denied. The Clerk of the Court is respectfully requested to terminate the pending Motion. (Dkt. No. 183.)

ORDERED. DATED: 2016

White Plains, New